STATE OF WISCONSIN
DEPARTMENT OF COMMERCE

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IN THE MATTER OF: The claim for reimbursement under the PECFA Program by

Richard J Glaser

Hearing Number: 97-203
Re: PECFA Claim #53098-3832-47

PROPOSED HEARING OFFICER DECISION

NOTICE OF RIGHTS

Attached are the Proposed Findings of Fact, Conclusions of Law, and order in the above-stated matter. Ahv party aggrieved by the proposed decision must file written objections to the findings of fact, conclusions of law and order within twentv,(20) days from the date this Proposed Decision is mailed. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your objections and argument to: Madison Hearing office, P.O. Box 7975, Madison, WI 53707-7975. After the objection period, the hearing record will ' be provided to the Executive Assistant of the Department of Commerce, who is the individual designated to make the FINAL decision of the department in this matter.

STATE HEARING OFFICER:
Beverly A. Crosson

DATED AND MAILED:
February 12, 2001

* *

MAILED TO:

Appellant Agent or Attorney

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Department of Commerce

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STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT

In the Matter of the claim for Reimbursement under the PECFA Program by

Richard J. Glaser
Glaser Veal Farm
3420 Sleepy Hollow Lane
Brookfield, WI 53005-2860

Hearing No. 97-203
PECFA Claim No. 53098-3832-47

PROPOSED DECISION

On November 23, 1997, the Wisconsin Department of Commerce (department) issued a decision denying the request by Richard J. Glaser, Glaser Veal Farm, (appellant) for reimbursement of costs totaling $50,949.87 under the Wisconsin Petroleum Environmental Cleanup Fund Act (PECFA). The Appellant filed a timely appeal and a hearing was scheduled for November 4, 1999 at Madison, Wisconsin, before Administrative Law Judge Beverly A. Crosson.

Prior to the hearing, the parties agreed that the issue to be decided at the hearing was "whether the Department of Commerce decision dated November 26, 1997 was correct or incorrect including but not limited to the issues raised in appellant's August 20, 1999 letter to the Department". The issues raised in the appellant's August 20, 1999 letter were the following:

1 . Whether the department's denial based on "remediation prior to submittal of cost estimate" was proper.
2. Whether the department's denial based on "lab services not competitively bid" was proper.
3 . Whether the department's denial for conducting interim remedial services prior to submittal of remedial alternatives was proper.
4. Whether analysis of 3 remedial alternatives would have produced a different result.
5. Whether the site qualifies for a determination of two occurrences.

The hearing took place on November 4 and November 5, 1999, January 4 and January 5, 2000, and was completed on February 16, 2000. Following the conclusion of the hearing, written briefs were received from the appellant and the respondent department. The matter is now ready for the issuance of a proposed decision.

Based on the testimony taken at the hearing and the exhibits received into the record, the administrative law judge makes the following

PROPOSED FINDINGS OF FACT

At all times material, Richard Glaser had been the legal owner of the property located at N2047 Highway 16 and 26, Watertown, Wisconsin 53098. He purchased the property in 1983, used five acres as a veal farm and rented out 35 acres for crop production. Tenants lived in the farmhouse located on the property until October 1994. He listed the property for sale and accepted an offer in November 1994. The closing on the property was originally scheduled for January 25, 1995, but was delayed due

to the discovery of petroleum contamination and the related cleanup activities. Mr. Glaser sold the property on April 17, 1995.

Prior to his sale of the property and at the request of the buyer of the property, Mr. Glaser arranged to have an underground gasoline storage tank (UST) removed from the property. On December 2, 1994, in the course of this removal, the excavating firm discovered another underground gasoline storage tank. The two USTs[1] were located less than ten feet apart and were not connected by any piping. They were approximately twenty feet from the farmhouse and drinking water well, and one tank was partially underneath a separate garage building. Each tank contained rust holes. Estimates placed the installation of one tank in the 1940s and installation of the other tank in the 1960s. Petroleum leakage was observed in the surrounding soil area (soil discoloration), and an odor of gasoline was noted. After the two tanks were removed, the excavation hole was refilled with gravel and clean soils. On December 5, 1994, a water sample was taken from the drinking water well. It was tested on December 15, 1994 and determined to be clean, without detectable contaminants.

The soil contamination was reported to the Wisconsin Department of Natural Resources (DNR), which advised Mr. Glaser by letter dated December 5, 1994 that he was responsible to determine the extent of the contamination and to properly clean up the site. Mr. Glaser also notified the Department of Industry, Labor and Human Relations (DILHR), the department responsible for the PECFA program at that time, of the petroleum discharge, and DILHR responded with a letter dated January 19, 1995, advising W. Glaser that the discharge he reported appeared to be eligible for reimbursement of petroleum contamination cleanup costs under the PECFA program. This letter also advised that the program deductible was based on a per "occurrence" basis, and noted that the definition of "occurrence" was "a contiguous contaminated area of one or more petroleum products".

Mr. Glaser hired the environmental consultant, Hydro-Search, Inc., subsequently known as HSI GeoTrans (HSI), on January 13, 1995 after receiving its remediation proposal dated January 10, 1995. In that proposal, HSI stated that it was registered with, and approved by, the PECFA program for PECFA related work. HSI noted that DNR had developed a checklist that must be followed in all "leaking UST remedial investigations and interim actions", and that HSI would prepare a work. plan for the site investigation/soil remediation that would conform to the DNR Requirements. HSI estimated the remediation costs to be $4791 for its services, approximately $500 in laboratory services, and approximately $60 per cubic yard for soil hauling and disposal. HSI stated that the costs for its services would not be exceeded without Mr. Glaser's approval. In its proposal, HSI noted that the USTs were small and the surrounding soil was clay, and that, therefore, it appeared that there was limited contaminated soil. At this time, HSI had done no investigation of its own and was relying on information provided by others, including Mr. Glaser. HSI further noted that the PECFA program required lab services to be bid, and that the lab it expected to use, Specialized Assays Environmental (SAE), in Nashville, Tennessee, was competitive with local lab costs and provided its lab results more quickly than the local labs. The proposal cited an- additional requirement under the PECFA program, the consideration of three remedial alternatives.

[1] One 200 gallon leaded gasoline tank and one 300 gallon unleaded gasoline tank, classified as far in USTs under Wis. Stats. Sec. 101.143(ei). Neither of these tanks was used by Mr. Glaser during his ownership of the property.

On or around January 18, 1995, a single soil sample was collected from the tank location for analysis for landfill disposal approval. No other samples were obtained and no site investigation was performed. On or around January 20, 1995, HSI submitted an Interim Remedial Action Work Plan (IRAWP) to DNR that proposed excavation of contaminated soil using field screenings of soil samples; sorting of soils; transporting and landfilling of impacted soils; backfilling the excavation with clean fill material; and preparation of a letter report to DNR. There were no cost estimates provided with that plan, and the plan itself, excluding cover sheet and table of contents, was brief, four pages in length. Around this time, HSI requested bids for excavation and transportation of approximately 100 cubic yards (150 tons) of contaminated soils. HSI did not solicit bid from three laboratories, but obtained price lists from three laboratories and chose SAE, the laboratory that offered the lowest costs. DNR verbally approved HSI's IRAWP on January 24, 1995. HSI did not submit any documents to DILHR at this time. Neither DNR nor the DILHR scheduled an interdepartmental coordination meeting with Mr. Glaser.

On or around February 3, 1995, HSI provided the landfill with the lab results from the soil sample previously obtained, and the landfill agreed to accept the contaminated sod. On February 10, 1995, excavation of the contaminated soil began. Based upon soil samples taken and field analyzed for hydrocarbon contamination during this process, HSI concluded that the area of contaminated soil was much greater than had originally been estimated and continued the excavation on February 13 with 13 truckloads of soil removed; February 14 with 10 truckloads of soil removed; February 16 with 12 truckloads of soil removed; and February 17 with 7 truckloads of sod removed. During this period of time, HSI did not notify Mr. Glaser, DNR, DILHR or any other local or state authority that HSI considered that the scope or level of contamination at the site presented any safety or health hazard or posed an imminent danger. There was no evidence of contamination in the drinking water well or of dangerous vapors in the farmhouse. In addition, during this excavation HSI did not utilize DNR's s ite investigation checklist or its soil sampling requirements for leaking UST site investigations and excavations.[2]

The excavation was discontinued on February 17 even though soil samples taken from the excavation walls were contaminated, because the contamination extended under the farmhouse and was not accessible and because such a large amount of soil had already been removed. At that time, the excavation area was backfilled with clean soil and gravel. A total amount of 951 tons of contaminated soil was removed and taken to the landfill. The excavating firm billed Mr. Glaser $17,250.644 for its services, primarily for hauling out the contaminated soil to the landfill and hauling in gravel and black dirt.[3] The landfill charged Mr. Glaser $24,378.62 for the contaminated soil.

[2]The soil sampling. requirements document provides that "[I]t is not appropriate to define the extent of contamination by excavating beyond the backfill to 'dig out of it,' as it is not possible to estimate the volume of contaminated soil. Instead, a qualified consultant should conduct a site investigation to define the degree and extent of contamination and to estimate the volume of contaminated soil:.

[3]This amount includes four loads of gravel placed on the site in April 1995.

Since contaminated soil remained at the site, HSI began a site investigation in March 1995. Prior to beginning the investigation, HSI did not provide any documents to DILHR, specifically no cost estimates were provided, nor was an evaluation of remedial alternatives provided. Eleven boreholes

were drilled and soil vents were installed in the borings that demonstrated the presence of contaminated soil. Soil samples were submitted to the laboratory, SAE, for analysis. In June 1995, four additional soil borings were drilled. Two of these borings were completed as soil vents due to evidence of contaminated soil, and the other two borings which showed no evidence of soil contamination, were completed as monitor wells. Shallow ground-water samples were submitted to the laboratory, SAE, for analysis. Another laboratory, not selected through a bidding process, performed several other tests. SAE and the other laboratory billed Mr. Glaser $2780.50 for these services. HSI did not use DNR's site investigation checklist or soil sampling requirements for this investigation.

In January 1996, HSI prepared an Interim Response Report, Site Investigation Report and Evaluation of Remedial Action Options which was submitted to DNR in February 1996. HSI submitted the Evaluation of Remedial Action Options portion to the PECFA program on February 19, 1996. This submission included a cost estimate for the remedial alternative selected for future remediation, natural biodegradation. Due to difficulties encountered with the soil vents filling with water, the remediation efforts were delayed. The DNR hydrogeologist assigned to this remediation questioned whether the excavation went too deep and excessive soil was removed, and that the soil vents filled with groundwater as a result. In June 1996, HSI provided DNR with a cleanup cost breakdown, including past costs of remediation in. the amount of $48,707,47 (excluding costs of investigation) and future anticipated costs of annual groundwater monitoring for 30 years (at present worth) in the amount of $27,520, totaling $76,227. As of February 2000, the site had not yet been closed, and DNR continued to monitor the remediation efforts.

In July 1996, HSI submitted a reimbursement claim to the department for $104,163.20, consisting of $34,505.60 for site investigation and $69,657.60 for remedial action. Loan origination and interest amounts totaled $13,063.38. The department paid $48,177,66 of that claim, and denied the balance of the claim for various reasons.

The appellant has appealed the denial of the following costs, totaling $50,894.26: $2780.50 (lab services provided between January and July 1995 - denied, not competitively bid); 17,250.644 (excavating and delivery services, performed in February and April 1995 - denied, a remediation service performed prior to submission of a cost estimate); $24,378.62 (landfill costs in February 1995 - denied, a remediation service performed prior to submission of cost estimate and evaluation of three remedial alternatives); $4917.55 (interim remedial services performed by HSI through February 27, 1995 - denied, services performed prior to submission of cost estimate and evaluation of three remedial alternatives); $1237.25 (interim remedial services performed by HSI through April 3, 1995 - denied, services performed prior to submission of cost estimate); $609.91 (HSI remediation services performed through November 27, 1995 - denied, because performed prior to submission and excessive consultant rate); and $209.79 (HSI cost for vent placed in May 1995 for passive remediation system - denied, provided prior to submission of cost estimate). At the hearing, the appellant's counsel indicated that the remaining minor costs were no longer in dispute.

4 Of this amount, the costs **of** $275 for building demolition, $35 for waterline repair and $840 for black dirt replacement were also denied as nonreimbursable activities.

The HSI Senior Engineer on this project stated that he did not provide cost estimates to DILHR prior to the start of the remediation because he was unaware of a requirement to do so. He also, stated that he did not provide the department with information about the costs for the remediation services at issue here until he submitted his PECFA claim for reimbursement. Furthermore, he acknowledged that had he been aware of the requirement he would have proceeded differently. He would have been more careful in estimating consultant service costs, due to the cost cap imposed by the cost estimate, and would have conducted an investigation to determine the extent of soil and groundwater impacts prior to the excavation.

RELEVANT LAW

Wisconsin PECFA Statute

The Wisconsin PECFA program was created, and became effective in 1988, through the adoption of Wisconsin Stat. Section 101.143. This program established a state fund to assist owners of qualified underground petroleum storage tanks in the mandatory cleanup of contamination resulting from tank. leakage. Effective August 9, 1989, award deductibles and maximums were tied to "each occurrence". Effective May 3, 1990, the Wisconsin legislature created Section 101.143(cs) which defined the term "occurrence" as "a contiguous contaminated area resulting from one or more petroleum products discharges". That statutory definition has remained unchanged.

Wisconsin PECFA Administrative Rules

Remediation. From May 1988 through December 1992, the PECFA program was administered under the state statute alone. Although informational materials were prepared by the department to explain the program, there were no administrative rules governing the program until January 1, 1993, when the department adopted an emergency rule, which provided in relevant part as follows:

> (2) REMEDIATION. The estimated cost for the selected remediation, alternative must provide a separate dollar amount for consulting services and the remediation/commodity items.
>
> (a) The dollar amount for consulting, shall establish the maximum reimbursable amount for consulting services during the remediation. (b) The cost detail for the selected remediation alternative shall establish the total estimated cost for the remediation up to the point of long-term monitoring or long-term operation and maintenance. The estimate shall establish a projected reimbursable amount. If the estimated remediation cost will be exceeded, the consultant must notify the owner and the department in writing of the anticipated exceedence.
>
> Wis. Adm. Code Sec. ILHR 47.33(2), (Emergency Rule effective January 1, 1993).

This emergency rule was replaced by a permanent rule, which took effect on March 1, 1994, and is applicable to the appellant's claim. The same section referenced above contained the following provisions in the permanent rule:

> (2) REMEDIATION. The estimated cost for the selected remediation alternative shall provide a separate dollar amount for consulting services, and the remediation and commodity items. The estimated costs for these items shall be submitted to the department as part of the comparison of remedial alternatives or, if the submittal of the alternatives is not required as specified in s. ILHR 47.335(3)(c). prior to the start of the remediation.

(a) The dollar amount for consulting, shall establish the maximum reimbursable amount for consulting services during the remediation.

(b) The cost detail for the selected remediation alternative shall establish the total estimated cost for the remediation up to the point of long-term monitoring or long-term operation and maintenance. The estimate shall establish a projected reimbursable amount. If the estimated remediation cost will be exceeded, the consultant shall notify the owner and the department in writing of the anticipated actual cost.

(c) If a contamination is identified which contains both eligible and ineligible products, the owner or operator and the department shall be notified immediately. The consultant, in conjunction with the owner or operator, shall establish a methodology-for dividing the costs of remediation between the eligible and ineligible products. The approach used to divide the costs of remediation shall be approved by the department prior to the submittal of the claim.

Wis. Adm. Code Sec. ILHR 47.33(2). [Underlining added to highlight new language in the permanent rule.]

Wisconsin Adm. Code Sec. 47.335(3)(c) provides that the comparison of remedial alternatives is required to be submitted to DNR and to DILHR if the elected alternative is "greater than $80,000".

Occurrence. Both the emergency and permanent agency rules incorporated the Wisconsin statutory definition of "occurrence", and have remained unchanged. In application, the department has required documentation of a "partition of clean soil" separating areas of contamination in order to find more than one contiguous contaminated area (or more than one occurrence).

Commodity services.

ILHR 47.33 COMPARATIVE PROPOSALS AND BID PROCESSES FOR REMEDIATION ACTIVTIES AND SERVICES. Except for home oil tank owners, the purchase of consulting and commodity services, not already covered by a detailed written contract, shall conform to the proposal and bidding procedures in this section. In order to qualify as an existing contract, the document shall be with a specific service provider and shall specify contract items, such as but not limited to, the project details, time limitations, projected completion dates, payment terms and other standard contract language.

(b) Commodity purchases. 1. All commodity services which include, but are not limited to, soil borings, monitoring-well construction, laboratory analysis, excavation and trucking shall be obtained through a competitive bid process. A minimum of 3 bids are required to be obtained and the lowest cost service provider shall be selected. An employee of a commodity service provider may not participate in the preparation of bid documents or other requirements of the bid process, except for providing technical material, if the employee's firm is a bidder.

2. Consulting firms may elect to bid laboratory services on a calendar-year basis in order to obtain volume discounts and reduce the number of bids that shall be completed for each remediation. In completing the competitive bid process, the consulting firm shall obtain a minimum of 3 written bids. The lowest bid shall be accepted. All discounts, rebates and savings shall be reflected in the PECFA claim.

3. The analysis of laboratory tests for passive or active bio-remediation and the performance of pump or pilot tests may be accomplished by either consultants or commodity providers. If these services are obtained by a consulting firm, as part of their consulting service, then the bidding of this service shall not be required.

4. An owner or operator may appeal to the department to obtain approval to select other than the lowest cost commodity service provider. The department may approve an appeal if it determines that the use of another service provider will further the goals of the program.

(5) COMMODITY ITEMS REQUIRING COMPETITIVE BIDDING. The following items shall be competitively bid. All bids shall be in units standard to the industry.

(a) Excavation of petroleum-contaminated soils;

(b) Trucking of petroleum-contaminated soils or backfill material;

(c) Thermal treatment of petroleum-contaminated soils,

(d) Laboratory services including mobile labs;

(e) Backfill material;

(f) Drilling and installing monitoring wells;

(g) Soil borings;

(h) Surveying if the service requires a registered land surveyor; and

(i) Other non-consulting services.

(8) DOCUMENTATION. The owner or operator shall maintain the documents and data used in the competitive bid and selection process. These records shall be maintained and provided to the department if requested as part of the claim review or audit processes.

PECFA Updates

The PECFA program has published informational updates regarding various aspects of the program since July 1993, and consulting firms who work in the PECFA field have been sent these PECFA updates. In February 1994, PECFA Update #3 was published and sent to PECFA consultants, including HSI, and fund participants. That update stated that "[r]emedial alternatives and/or remediation estimates must be submitted **prior** to the implementation of the remedial action plan (emphasis in original), and "[i]f the remedial action is implemented prior to the submittal of the cost estimates, the department may disqualify consultant and/or consulting firm registration(s) and may not reimburse the remediation costs".

PROPOSED DISCUSSION

1. Remediation services performed prior to submission of cost estimate

At the time that the remediation services at issue here were performed, the administrative code required that the estimated costs for the remediation, including consulting services, the remediation and commodity items, be submitted to the department prior to the start of the remediation. The code further provided that the dollar amount submitted for consulting services would establish the maximum reimbursable amount for consulting services during the remediation. This requirement had been in place for one year prior to the remediation at issue, and HSI had additional notice of the requirement from PECFA Update #3. The appellant did not provide estimated costs for the remediation to the department prior to the start of the remediation.

The appellant argues that the remediation service costs incurred by him but denied by the department should be paid because an "interim remedial action" involving a potentially emergency situation was appropriate in the matter and no department response to the estimate would have occurred since the cost estimate would have been less than $80,000. In addition, he argues that his oversight of the cost estimate submission requirement should be excused because the Department of Natural Resources and the Department of Commerce failed to hold a mandatory meeting with him or his consultant. Finally, he argues that the excavation work done was the most cost effective method of remediation, and that his failure to file one document should not result in denial of reimbursement for remediation services.

The appellant's argument that an "interim remedial action" was required due to a potentially dangerous environmental situation is entirely without merit. The water from the drinking water well was clean, there was no evidence of potentially harmful vapors in the farmhouse or in the atmosphere, and at the time of the excavation, HSI did not tell Mr. Glaser or anyone else of the existence of a potentially dangerous situation. HSI's assertions that a quick "interim remedial action" was appropriate due to health and safety risks at the site are not credible. In fact, it is far more likely that the speedy intervention was due to the pending real estate sale and not to existing environmental factors.

In addition, the appellant's arguments ignore the *clear* legal requirement under the PECFA program to submit cost estimates prior to the start of remediation. The appellant's consultant should have been aware of this simple requirement and aware that the remediation costs might not be reimbursed if the remedial action was implemented prior to the submittal of the cost estimates. The fact that no departmental response to the cost estimate submission was likely is irrelevant. Had the consultant complied, the issue would not have risen. The failure of the two departments to convene a meeting about the site is a separate matter and does not excuse the consultant from his obligation to comply with the PECFA requirements.

Finally, had the appellant's consultant complied with the requirement to estimate costs prior to the remediation, he would have been more careful and would have conducted a site investigation before beginning the remediation. It may be that the remedial actions undertaken would have been different, would have been more limited, and would have been less costly -- legitimate considerations for the department and obvious justifications for the requirement of the submission of a cost estimate prior to remediation.

Therefore, the appellant has not established that the costs incurred for services performed prior to the submission of a cost estimate should be reimbursed by the PECFA program.

Remediation prior to submittal of three remedial alternatives

The department denied reimbursement of two of the remediation services at issue in this appeal because they were performed prior to the appellant's submittal of three remedial alternatives to the department. Reimbursement of each of these costs was also properly denied for the reason that the services were performed or the costs accrued prior to the submittal of a cost estimate.

The administrative code requires that submission of three remedial alternatives be provided to the department prior to remediation in cases where remediation costs will exceed $80,000. In this matter, the final claim for PECFA reimbursement did exceed $80,000.

The appellant argues that throughout the remediation process the remediation costs were below $80,000, and therefore, there should have been no requirement that remedial alternatives be submitted. He further argues that an analysis of three remedial alternatives would not have produced a different result.

The appellant's arguments are not compelling in that no meaningful cost estimates were prepared throughout the process, since inadequate site investigation occurred prior to remediation which resulted in initial cost estimates that were clearly erroneous. Therefore, the appellant has not established that any costs denied by the department due to the appellant's failure to submit three remedial alternatives should be reimbursed by the PECFA program.

Laboratory services not competitively bid

The administrative code requires that commodity services, including laboratory services, be obtained through a competitive bid process, with a minimum of three bids, and selection of the lowest cost provider. In choosing its laboratory service providers, HSI obtained price lists from three laboratories and chose the laboratory that provided the lowest costs. HSI did not comply with the bidding requirements of the PECFA law. The department denied reimbursement of those costs.

The appellant argues that the department should provide reimbursement for its laboratory costs because it chose the laboratory service provider with the lowest costs. This argument is not persuasive. HSI knew that the PECFA program required that commodity services, including laboratory services, be competitively bid, and it utilized the bidding process in choosing the excavator and the landfill. In its January 1995 proposal to Mr. Glaser, HSI stated that the PECFA program required that lab services be bid. Nevertheless, it did not follow the PECFA program requirements or its own proposal. Although the law does permit an owner to request a waiver from the department's rules, no such waiver was requested or granted here.

Under these circumstances, the appellant failed to demonstrate that the laboratory costs fall within the PECFA eligibility requirements, and the Department correctly denied reimbursement- of the costs.

Occurrences

The Wisconsin PECFA statute and regulations tie reimbursement award maximums and deductibles to each "occurrence". Appellant argues that this site should qualify for two occurrences because there were two separate USTs that leaked at different times and, therefore, there would have been a point in time during which there were two separate contamination areas or plumes. The appellant argues further that if the appellant had chosen to remediate the site at that point in time, there would have been two separate occurrences and he would have been eligible for two separate claims. He argues that he is being treated arbitrarily by the department as a result.

The appellant's argument is not persuasive. The term "occurrence" has been defined *clearly* under the statute since 1990, and that definition looks at a "contiguous contaminated area" that may result from *one or more discharges.* The definition anticipates the situation in which two discharges occur and merge into one contaminated area. The appellant provided no evidence to establish that there were two contiguous contaminated areas on this site. The evidence, including the appellant's exhibits, showed one contiguous contaminated area radiating out from the area of the two USTs that were located close to one another. There was no evidence of a partition of clean soil that would have separated two areas of contamination, and any inference the appellant makes that a partition of clean soil ever existed is not a compelling factual one. Furthermore, the department's method of looking for a partition of clean soil in order to determine the existence of two occurrences is a common sense procedure to use under the circumstances. It is not arbitrary, nor is it unfair to the appellant.

The appellant has not established the existence -of two occurrences. Therefore, the department correctly determined that there was one occurrence in this matter.

PROPOSED CONCLUSIONS OF LAW

The Appellant was an owner or agent of a property covered by the remedial provisions of Wis. Stat. § 101.143.

The Department was correct in denying reimbursement of costs totaling $48,603.76 for services performed prior to the submittal of a cost estimate within the meaning of Wis. Admin. Code Sec. ILHR 47.33(2).

The Department was correct in denying reimbursement of costs totaling $29,296.17[5] for services performed prior to evaluation of three remedial alternatives within the meaning of Wis. Admin. Code Sec. ILHR 47.335(3)(c),

The Department was correct in denying reimbursement of costs totaling $2780.50 for laboratory services on the basis that those services were not competitively bid within the meaning of Wis. Admin. Code §ILHR 47.3 3 (1)(b).

The Department was correct in determining the existence of one occurrence on the site, as defined in Wis. Stat. Sec. 101.143(cs), and establishing the maximum reimbursement amount accordingly.

5 These costs are also included in the total amount of $48,603.76, costs denied since accrued prior to the submittal of a cost estimate.

PROPOSED DECISION

The Department's decision to deny all contested amounts is affirmed.

Dated: February 12, 2001

By Beverly A. Crosson
Administrative Law Judge
Acting as Hearing Examiner for the
Department of Commerce

97-203/bac